



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases the penalties for identity theft offenses committed in furtherance of other crimes.

Promote personal responsibility – The bill increases penalties for unlawful behavior.

#### B. EFFECT OF PROPOSED CHANGES:

The Select Committee to Protect Personal Information (Select Committee) was created, pursuant to Rule 7.6, on August 2, 2007, and was directed to complete its work by March 4, 2008. The Select Committee held six meetings that focused on issues involving identity theft and government collection, retention, and disposal of personal information.

The Select Committee heard testimony from the Agency for Enterprise Information Technology, the Department of Highway Safety & Motor Vehicles, the Department of State, the Governor's Commission on Open Government Reform, and the Supreme Court Committee on Access to Court Records. The Select Committee also heard from private sector representatives regarding their use of government records and the information contained therein.

The Select Committee recommended the following statutory change relating to the criminal use of personal identification information.

Currently, s. 817.568, F.S., provides that, “[a]ny person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, personal identification information<sup>1</sup> concerning an individual without first obtaining that individual's consent, commits” a third degree felony. This offense is commonly known as “identity theft.”

This bill creates a subsection in s. 817.568, F.S., to provide for the reclassification of penalties for a felony or misdemeanor when the offender, in the commission of a crime, uses the personal identification information of another person, without obtaining that person's consent. While the bill provides for certain reclassifications of penalties, it does so only to offenses other than felonies or misdemeanors already provided in s. 817.568, F.S.

This bill provides for enhanced penalties as follows:

- A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.
- A misdemeanor of the first degree is reclassified to a felony of the third degree.
- A felony of the third degree is reclassified to a felony of the second degree.
- A felony of the second degree is reclassified to a felony of the first degree.
- A felony of the first degree is reclassified to a life felony.

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<sup>1</sup> S. 817.568(f), F.S., defines “personal identification information” as “any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any: 1) Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food stamp account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card; 2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; 3) Unique electronic identification number, address, or routing code; 4) Medical records; 5) Telecommunication identifying information or access device; or 6) Other number or information that can be used to access a person's financial resources.”

The reclassification of these offenses will have the effect of increasing the maximum sentence that a judge can impose for the offense. The maximum sentences are as follows:

- Second degree misdemeanor: by a definite term of imprisonment not exceeding sixty days.
- First degree misdemeanor: by a definite term of imprisonment not exceeding one year.<sup>2</sup>
- Felony of the third degree: by a term of imprisonment not exceeding five years.<sup>3</sup>
- Felony of the second degree: by a term of imprisonment not exceeding fifteen years.<sup>4</sup>
- Felony of the first degree: by a term of imprisonment not exceeding thirty years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.<sup>5</sup>
- Life felony: by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.<sup>6</sup>

C. SECTION DIRECTORY:

Section 1. Amends s. 817.568, F.S., relating to criminal use of personal identification information.

Section 2. Provides effective date of October 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

On March 31, 2008, the Criminal Justice Impact Conference decided that the bill would have an indeterminate but potentially significant prison bed impact on the Department of Corrections.

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<sup>2</sup> S. 775.082(4)(a), F.S.

<sup>3</sup> S. 775.082(3)(d), F.S.

<sup>4</sup> S. 775.082(3)(c), F.S.

<sup>5</sup> S. 775.082(3)(b), F.S.

<sup>6</sup> S. 775.082(3)(a)(3), F.S.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill may have a fiscal impact on local government due to the increased sanction for second degree misdemeanor offenses. However the mandates provision does not apply because this bill is a criminal law.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### D. STATEMENT OF THE SPONSOR

None.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES